IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P No. 5706 of 2003
Date of decision : December 14, 2007

Zile Singh and others,

..... Petitioners

through Mr. Jai Vir Yadav, Advocate

v.

State of Haryana & another,

..... Respondents

through Mr.Ashish Kapoor, Addl.A.G.Haryana

CORAM : HON'BLE MR.JUSTICE RAJIVE BHALLA
HON'BLE MR.JUSTICE S.D.ANAND

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1. **Whether Reporters of Local Newspapers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest ?**

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RAJIVE BHALLA, J

The petitioners pray for the issuance of a writ in the nature of certiorari, quashing the notifications, issued under Sections 4 and 6 of the Land Acquisition Act, 1894, (for short herein after referred to as "the Act"), dated 13.8.2001 and 9.8.2002 respectively, as also the notice, issued under Section 9 of the Act.

Counsel for the petitioner submits that the petitioners are owners in possession of land, measuring 2 bighas 19 biswas, comprised in Khasra Nos.108/1, 109, 110/1, 111/1, situated in village Chakkarpur, Tehsil and District Gurgaon. Khasra Nos.108, 110 and 111 were sought to be acquired, vide notification, issued under Section 4 of the Act, dated 25.2.1983. Khasra No.109 was sought to be acquired, pursuant to a

notification, issued under Section 4 of the Act, dated 5.10.1984. However, these lands were released from acquisition.

The petitioners have constructed shops, which have been let out to about 60 different tenants. Apart from the construction, raised by the petitioners, a large number of residences have come up in the vicinity. On the western side, across the road, construction has been raised by the Housing Board. The northern and eastern side, towards the petitioners' land, are occupied by Sahara India Limited, a builder, who has constructed a multi storeyed complex for residential and commercial purposes. Sahara India Limited approached the petitioners to sell their land but the petitioners refused to sell. The State of Haryana, at the behest of M/S Sahara India Limited and in order to benefit a private builder, issued a notification, under Section 4 of the Act, dated 13.8.2001, proposing to acquire the petitioners' land for a public purpose, namely, for the development and utilization of the land as residential and commercial Sector 28, Gurgaon.

The petitioners filed objections, under Section 5A of the Act on 11.9.2001, which were rejected summarily. The petitioners also preferred a representation to the government for release of their land. The Senior Town Planner, Gurgaon, vide communication, dated 4.1.2002, recommended release of the petitioners' land, as the construction adjoined the village abadi, and it was possible to adjust it in the lay out plan. The Land Acquisition Officer also submitted a report to the Director, Urban Estates Department, Haryana, dated 28.11.2001, setting out therein that the construction raised, prior to the issuance of the notification, under Section 4 of the Act, consists of a number of shops and houses. The Administrator,

HUDA, Gurgaon, after considering the aforementioned reports, addressed a letter to the Director, Urban Estate, Haryana, dated 11.6.2002, that in case the petitioners' land is released, the land, falling behind the petitioners' land, would be denied any approach. The Administrator, therefore, recommended that in case a decision was taken to release the petitioners' land, a proper approach be provided to the land, falling behind the petitioners' land. However, without considering these reports, the State of Haryana issued a notification, under Section 6 of the Act, dated 9.8.2002, followed by a notice, under Section 9 of the Act, dated 14.3.2003.

It is further submitted that admittedly the petitioners' construction existed prior to the issuance of the notification, under Section 4 of the Act. The State of Haryana be, therefore, directed to release the petitioners' land, in accordance with their policies for release.

Counsel for the State of Haryana, on the other hand, submits that the land has been acquired for residential, commercial and institutional purposes for Sector 28, Gurgaon. The construction, raised by the petitioners, was illegal and in blatant disregard to the provisions of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963. It is further submitted that even if it is presumed that the petitioners had constructed shops/houses prior to the notification, issued under Section 4 of the Act, this fact alone would not entitle them to plead that the notifications are illegal or void. The recommendations, made by the Senior Town Planner, the Land Acquisition Officer, as also the Administrator, HUDA were considered by the Government and it was decided that as the petitioners' land was necessary for a successful implementation of the proposed scheme of acquisition, the land could not be

released. It is further submitted that the plea of mala fide should be rejected, as neither M/S Sahara India Limited nor Ved, the alleged broker, working with M/S Sahara India Limited, have been arrayed as parties. The plea of mala fide lacks sufficient particulars and has been emphatically denied. It is further submitted that though the State of Haryana has framed a policy for release of constructed area, the petitioners' land could not be released, as its release was not found feasible.

We have heard learned counsel for the parties, perused the paper book, as also the impugned notifications/notice.

It is not denied that the petitioners raised construction, prior to the issuance of the notification, under Section 4 of the Act and the Senior Town Planner, as also the Land Acquisition Officer recommended their release. The State Government, however, did not accept these recommendations and directed acquisition of the petitioners' land. The land is required for a successful implementation of the public purpose, disclosed in the impugned notifications and is integral to the execution thereof. The petitioners on the other hand have failed to advance any argument against the public purpose, set out in the notifications i.e the development and utilization of the land as residential and commercial Sector 28, Gurgaon.

As regards the plea for release of the petitioners' land, suffice it to say that implementation of the policy of release falls within the exclusive domain of the State. The petitioners cannot, as a matter of right, claim or pray for release of their land, on the basis of the policy. Even otherwise, their plea for release of land stands rejected by the Government. We find no error, whether of fact or of law in the State proceeding to acquire the petitioners' land. Governments acquire land, pursuant to powers conferred

by the Land Acquisition Act. The definition of land, as set out in the Act, does not draw any distinction between land and/or structures, raised thereon, and, therefore, in the exercise of its powers, under the Land Acquisition Act, a Government may proceed to acquire land whether vacant or constructed. The decision to acquire land rests on the subjective satisfaction of the Government, and can only be made subject matter of judicial review, where the acquisition is occasioned by mala fides, is arbitrary, unreasonable, or violative of the provisions of any existing law. We find no such error or infraction in the decision of the State Government to acquire the petitioners' land/structures.

As regards the plea of mala fide, suffice it to say that though a reference has been made to M/S Sahara India Limited and to one Ved s/o Sobha Chand, the alleged broker of M/S Sahara India Limited, neither of them has been arrayed as a respondent. Even the pleadings are deficient as regards material particulars of the plea of mala fide. Consequently, we express our inability to accept the contentions that acquisition proceedings were occasioned by mala fide.

Consequently, as we are satisfied that the impugned notifications are legal and valid, the present writ petition is dismissed with no order as to costs.

(RAJIVE BHALLA)
JUDGE

(S. D. ANAND)
JUDGE

December 14, 2007
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